

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 381 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
3 to 5 No

STATE OF GUJARAT

Versus

VIJAYBHAI PRATAPBHAI DHURUV

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR KR RAVAL for Respondents

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/03/98

ORAL JUDGEMENT

Heard learned APP Mrs. B.R. Gajjar for the petitioner State. Rule. Mr. K.R. Ravel, learned Advocate waives service of Rule on behalf of all respondents. With the consent of the learned Advocates appearing for the parties, the matter is finally decided today.

2. Being aggrieved and dissatisfied by the order passed by the learned Chief Judicial Magistrate,

Bhavnagar, District Bhavnagar, in the matter of Criminal Case No. 659 of 1997 below Exh. 7 dated 11.6.1997, the State of Gujarat has preferred the present Revision Application.

3. That vide impugned Order, learned Chief Judicial Magistrate has dropped the proceedings against the respondents under Section 203 of the CRPC and has cancelled the process earlier issued.

4. According to the petitioner, the case of prosecution is as under :

On 8.12.1995, Food Inspector Mr. N.M.Bhatt, visited the shop of M/s Maharaja Agency (respondent No.5) at Bhavnagar, and purchased a sample of "ECOPROT PLUS" (mango flavor). That said sample was sent to Public Analyst at Rajkot for examination and on receipt of the report, it was found that the material contained in the product, there was presence of turmeric powder. That the manufacturer had failed to show the material used in the product in descending order on the label including turmeric power and thereby had committed an offence of misbranding under Section 2(ix)(k) of the Prevention of Food Alteration Act, 1954 (hereinafter referred to as the "Act"). Furthermore, the accused 12 and 13 (the respondents No. 12 and 13 hereinabove) failed to supply the information regarding constitution of the manufacturing firm and thereby committed the offence under Section 14-A of the Act, which is punishable under Section 16(1)(c) of the said Act. That Shri N.M. Bhatt as authorised Food Inspector, lodged a complaint in the Court of Chief Judicial Magistrate, Bhavnagar on 12.2.1997 against respondents No. 1 to 13 and the court had issued process against the present respondents. That the respondents have appeared before the Court and had moved an application - Exhibit 7 contending that the complainant had collected the sample on 8.12.1995 and thereafter despite receiving the report of Public Analyst on 5.1.1996, had filed the complaint on 12.2.1997, and as such, the complaint has been filed after a lapse of one year and two months from the date of alleged offence. That according to penal provisions of the Act stated in the complaint, the maximum punishment prescribed being only one year, the limitation prescribed for filing the complaint under Section 468 is only one year. Thus, the complaint filed by N.M. Bhatt, Food Inspector, against the present respondents was barred by limitation.

5. The respondents had further contended that report of Public Analyst, copy of which is supplied to the

respondents as accused disclosed the fact that sample was analysed on 26.12.1995 while the Public Analyst has signed on the same on 5.1.1996. That as per the proposition of law settled by the High Court of Gujarat in Criminal Appeal No.200 of 1987 decided on 24.2.1994 and Criminal Revision Application No.2936 of 1995 decided on 19.3.1996, such a report of Analyst has no evidentiary value as the same has not been signed by Public Analyst on the day on which analysis of the sample was carried out. That allegations made in the complaint against present respondents are based on report of Public Analyst which was not admissible in evidence, hence the accused should be discharged and further proceedings against accused should be dropped.

6. That the prosecution filed reply to the above stated application moved by the respondents and controverted the contents made therein. That the learned Chief Judicial Magistrate heard the parties and decided the application - Exhibit 7 vide impugned order dated 11.6.1997 allowing the application and discharging the respondents as accused of said Criminal Case No. 659 of 1997 and also cancelled the process and dropped the further proceedings against which the State of Gujarat has filed the present Revision Application.

7. Learned A.P.P. Ms. B.R. Gajjar has taken me through the impugned order and has contended that the respondents as accused in Criminal Case No. 659 of 1997 were also charged for the breach of provisions contained vide Section 14-A of the Act, which is made punishable under Section 16(1)(c). That report of Public Analyst is not necessary to establish the offence made punishable under Section 14-A. It is submitted by the learned APP that respondents No. 11 - 12 have failed to supply the constitution of their firm despite a demand made by the complainant - the Food Inspector, and as such, learned CJM ought not to have dropped the proceedings against the present respondents. It is also submitted by learned APP that the Chief Judicial Magistrate has failed to appreciate the objection raised by prosecutor about the authentic copy of judgment referred to and relied on by present respondents as accused of the said Criminal Case.

8. As against that Shri K.R. Raval, learned Advocate appearing on behalf of the respondents has produced the true xerox copy of the judgment delivered by Brother Judge Shri N.N.Mathur on 24.2.1994 in the matter of Criminal Appeal No.200 of 1987. He has also produced true xerox copy of judgment delivered by Brother Judge Shri S.D. Dave on 19.3.1996 in the matter of Criminal

Appeal No. 2936 of 1995. In both the matters, this Court has taken the view that in the event of Public Analyst not signing the report on the day on which analysis of the sample has been carried out, the report has no evidentiary value and it cannot be treated as legal evidence. That this court has taken the said view by following the decision rendered by the High Court of Bombay in Criminal Appeal No. 818 of 1969 decided on 15.12.1970 and Criminal Appeal No. 1008 of 1967 decided on 25.4.1969. I have no reason to disbelieve the facts emerging from the true copies produced before me.

9. Learned Chief Judicial Magistrate has rightly followed the proposition of law approved and settled by this Court in the above stated Criminal Appeals while deciding Application - Exhibit - 7. That submission of learned APP in respect to breach of provision made offence under Section 14-A of the Act is concerned, I do not find any merit because on plain reading of the Section, it is apparent that if the person is a vendor of the sample, he has to supply the information about the manufacturer of the said material, from whom he has purchased the same. That said provision cannot be made applicable to the manufacturer from which a sample has been taken by the Food Inspector. In the instant case, the Food Inspector Mr.N.M. Bhatt has undisputedly obtained the sample of the said product from Respondents No. 12 and 13, who are the manufacturer of the said product, and thereby there is no question of breach of provisions under Section 14-A of the Act.

10. In the overall consideration of the facts and circumstances apparent from the material produced on record, I do not find any illegality or procedural irregularity committed by learned CJM, Bhavnagar; while passing the impugned order. The order appears to have been passed after considering the settled proposition of law and thereby I do not deem it just to interfere with the same.

11. On the basis of the above stated discussion, present Revision Application fails. Hence, the petition stands disposed of as rejected. Rule is discharged. No order as to costs.

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